

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF ISSAQUAH**

In the Matter of the Application of)	No. FP20-00001
)	
Leo Suver, on behalf of Steve Burnstead)	Mallard Pointe Final Plat
Construction, LLC)	
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Final Plat</u>)	AND DECISION

SUMMARY OF DECISION

The Hearing Examiner **APPROVES** the final plat subdividing a 13.1-acre parcel into 34 single-family residential lots, with associated improvements, at 21403 SE 43rd Way. Conditions are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF PUBLIC MEETING

Meeting Date:

The Hearing Examiner held a public meeting on the request on January 14, 2021, using remote meeting technology in light of the ongoing COVID-19 pandemic.

Comments:

The following individuals provided comments at the public meeting:

Valerie Porter, City Associate Planner
Doug Schlepp, City Senior Consulting Engineer
Leo Suver, Applicant Representative

Exhibits:

The following exhibits were submitted at the public meeting:

1. Vicinity Map
2. Project Narrative, received February 27, 2020
3. Final Plat Application, received February 27, 2020
4. Preliminary Plat Plans (PP16-00005)
5. Revised Preliminary Plat Map (PP16-00005)
6. Hearing Examiner Preliminary Plat Findings, Conclusions, and Decision, dated October 16, 2017
7. Final Plat Plan Sheets, received October 7, 2020
8. Bond Summary and Public Works Director Letter, dated October 27, 2020
9. Affidavit of Mailing (Notice of Application), dated March 19, 2020
10. Affidavit of Sign Posting (Notice of Public Meeting), dated December 22, 2020
11. Affidavit of Mailing (Notice of Public Meeting), dated January 4, 2021

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12. Copy of Published Notice, *The Seattle Times*, dated December 21, 2020
13. Email from Craig Kerwien to Valerie Porter, dated March 24, 2020
14. Notice of Application and Public Meeting, dated January 13, 2020
15. Staff Report, dated December 29, 2020

The Hearing Examiner enters the following findings and conclusions based upon the public comments and exhibits admitted at the public meeting:

FINDINGS

Application and Notice

1. Leo Suver, on behalf of Steve Burnstead Construction, LLC (Applicant), requests approval of a final plat to subdivide a 13.1-acre parcel into 34 single-family residential lots, with associated improvements including an internal roadway, a public trail along SE 43rd Way, landscaping, stormwater, utilities, and frontage improvements. The property is located at 21403 SE 43rd Way.¹ *Exhibit 2; Exhibit 3; Exhibit 15, Staff Report, page 1.*
2. The City of Issaquah (City) deemed the application complete on March 3, 2020. The City mailed notice of the application to adjacent property owners within 300 feet of the site, and to parties of record, on March 20, 2020, with a comment period as required by the municipal code. On December 22, 2020, notice of the public meeting associated with the final plat application was posted on-site. On December 30, 2020, notice of the public meeting was published in the *Seattle Times*. The next day, the City mailed or emailed notice of the public meeting to parties of record and adjacent property owners within 300 feet of the subject property. *Exhibit 9; Exhibit 10; Exhibit 11; Exhibit 12; Exhibit 14; Exhibit 15, Staff Report, page 2.*
3. The City received one public comment in response to its notice materials. Area resident Craig Kerwien submitted an email comment, March 24, 2020, discussing pedestrian and vehicle safety associated with the project as well as concerns about the roundabout located to the south of the project. City staff reviewed Mr. Kerwien's comment and noted that a traffic impact study with analysis supporting the access design was reviewed by the City prior to preliminary plat approval and that the roundabout in question is not within the scope of work of this project. *Exhibit 13; Exhibit 15, Staff Report, pages 10 and 11.*

Environmental Review

4. The City acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, during

¹ The tax parcel number associated with the property is 162406-9007. *Exhibit 15, Staff Report, page 1.*

the preliminary plat approval process. Accordingly, no further SEPA review is necessary for final plat review.² *Exhibit 15, Staff Report, page 2.*

Comprehensive Plan and Zoning

5. The property is designated “Multifamily Residential” (MR) by the City Comprehensive Plan and is zoned “Multifamily – High”. *IMC Table 18.07.360*. The purpose and intent of the MF-H designation is to provide for high-density multifamily neighborhoods, in direct proximity to a variety of urban services and commercial uses. Duplexes and multifamily units are permitted uses. *Exhibit 6; Exhibit 15, Staff Report, page 1.*

Project Background

6. A preliminary plat application was submitted for the site, along with a request for a critical areas variance, that the City deemed complete in December 2016. The City’s Hearing Examiner held an open record hearing on the proposed preliminary plat and critical areas variance on September 19, 2017, and approved the preliminary plat application on October 16, 2017, with 27 conditions. The Applicant submitted construction permits for clearing/grading, road construction, and utilities, and began constructing plat infrastructure in May 2019. The Applicant has not proposed any significant changes from the approved preliminary plat. *Exhibit 6; Exhibit 15, Staff Report, page 2.*
7. Although no significant changes have been proposed, the Applicant has proposed several minor deviations from the preliminary plat. In reviewing the proposed changes, City staff determined:

The final plat does not increase the number of lots and does not decrease the size of any lot by more than 10%. Eight of the lots have increased in area. One lot has decreased in size but said lot has not decreased in size by more than 10%.

The final plat does not substantially alter the location or nature of any improvements or any other element of the subdivision, nor does the final plat significantly alter the subdivision. Over 70% of the lot sizes remain the same size, but minimal changes have been made to nine lots from the preliminary plat design to the final plat design.

This lot configuration was not part of the initial application submittal but was presented during the September 19, 2017 Hearing Examiner meeting and approved. Initially there was a 50-foot East-West trail easement

² As noted by the Washington Supreme Court, “SEPA does not mandate bureaucratic redundancy but only that the heretofore ignored environmental considerations become part of normal decision making on major actions.” *Lovelace v. Yantis*, 82 Wn.2d 754, 765 (1973).

located at the northern edge of the parcel recorded to benefit King County. Due to the location of the trail easement, Lots 27-31 have been relocated from the north side of the parcel and incorporated into the row of lots that border Tract C as mentioned in the Hearing Examiner decision. The final plat plans reflect this change.

Exhibit 15, Staff Report, pages 3 and 4.

Preliminary Plat Conditions

8. The City reviewed the final plat for consistency with the preliminary plat conditions previously approved by the Hearing Examiner. The applicable preliminary plat conditions are numbered below, followed by the City staff's analysis and findings in italics stating how the proposed final plat complies with each of the conditions:³

1. (deleted)

Finding: Condition no longer applicable. Deleted from the Preliminary Plat Notice of Decision.

2. (deleted)

Finding: Condition no longer applicable. Deleted from the Preliminary Plat Notice of Decision.

3. Coordinate water and sewer connection and service with the Sammamish Plateau Water & Sewer District. Water and sewer availability shall be required prior to issuance of the Final Plat approval.

Finding: Water and Sewer availability certificates were issues by SPWSD on December 13th, 2016. City Staff coordinated with SPWSD on the utility design and utilities have been constructed under a Developer Extension with SPWSD.

4. Prior to approval of the Construction permit for the roads, the Applicant shall demonstrate that the road configuration will accommodate turning radii for the fire ladder truck.

Finding: A turning exhibit has been provided to the City for review demonstrating a fire ladder truck can maneuver through site.

³ Minor corrections to the language of the staff report and preliminary plat conditions were made to address typographic and grammatical errors. No substantive corrections or content, however, have been changed.

- 5. Site clearing shall on steep slopes shall be limited to April 1 – November 1.**

Finding: Site clearing activities began in May 2019 and were completed prior to November 1, 2019.

- 6. Prior to construction of the retaining wall for slope 3, additional geo-technical analysis shall be provided to the City that considers the impacts of temporary excavation for the proposed vault. Provide the City with an affidavit from a qualified professional that no issues were encountered during construction activities.**

Finding: A report dated March 30, 2018 by Aziz Engineering was received by the City addressing the required geo-technical analysis for the proposed vault. May 21, 2020 stamped letter from Riley Group, a geotechnical firm, was received by the City which states that no issues were encountered during the vault excavation or backfill.

- 7. Slopes 4-6: on-site inspection of construction is required by geo-technical expert. Additional geo-technical review is necessary prior to the permitting of the wall that supports the road connection for the northern lots, to ensure global stability and monitor construction of the wall. Provide the City with an affidavit from a qualified professional that no issues were encountered during construction activities.**

Finding: A May 11, 2018 Technical Memorandum by Golder Associates addressing the stability of the wall supporting Road B (connection for the northern lots) in the area of Slopes 4-6, was received and reviewed (SW18-00009 and BLD18-00360). A May 21, 2020 stamped letter from Riley Group, a geotechnical firm, was received by the City which states that no issues were encountered during the construction of the wall.

- 8. Slope 7: Geo-technical inspection of construction is required. Provide the City with an affidavit from a qualified professional that no issues were encountered during construction activities.**

Finding: The Riley Group, Inc., a geotechnical firm, observed the construction of the block wall along SE 43rd Way near Slope 7. The stamped letter provided by The Riley Group, Inc. dated May 21, 2020 states no issues were encountered during the construction of the wall.

- 9. Prior to final plat approval, provide a report on the 2-9 feet of medium dense fill soils that underlie lots 5-9 and on whether mitigation measures are necessary to support buildings.**

Finding: The Riley Group, Inc., a geotechnical firm, observed the soils and provided recommendations for foundation design in their stamped letter dated May 21, 2020. Suitable soils for support of the residences should be provided in accordance with the recommendations in the letter. Recommendations provided by The Riley Group, Inc. should be verified during the building permit review.

- 10. Excavation for the vault may encounter perched groundwater. Prior to issuance of the Site Work Permit to construct the vault, additional geotechnical information is required.**

Finding: A geotechnical report was prepared by Golder Associates and was submitted with the applicant's site work permit (SW18-0009) and building permit (BLD18-00359) application. The report described the soil types in this area and showed that the stormwater vaults were designed per the identified soil bearing and conditions. Further, during construction of the vault, the Riley Group, geotechnical firm was present on-site and provided a stamped letter dated May 21, 2020 confirmed "suitable conditions for the support of the vault were observed."

- 11. Prior to final plat approval, impact fees will be required. Traffic impact fees have been completely satisfied with the repayment of the balance for LID 23.**

Finding: Payment has been received for Local Improvement District (LID) 24, mistakenly referred to as LID 23. Per Public Finance, Inc., a company that partners with local governments to assist in the financing of public benefit projects, the applicant paid the full amount in April 2017.

- 12. Roads and the stormwater vaults shall be privately-owned.**

Finding: The plat plans identifies the roads and stormwater vaults as privately-owned and maintained.

- 13. Prior to issuance of the first building occupancy, two trail signs, approved by King County shall be installed. One sign shall be provided in the Tract at the east trail connection. The second sign shall be placed at the trail intersection with SE 43rd Way. Signs shall also be placed along the property line with language stating there is no entry to park property except at authorized access points.**

Finding: This condition is no longer applicable. The King County trail has been reduced from 50-feet to 30-feet and development no longer encroaches into the easement. Please see Condition of Approval No. 25 for more information.

- 14. Prior to issuance of building permits representing the 17th home, grading or construction impacts to the wetland/stream critical areas will be restored.**

Finding: This condition has not been fully satisfied. A financial bond has been provided to the City for mitigation work within the critical areas. Restoration work will not be inspected by the City until a request for temporary Certificate of Occupancy of the 17th home and will not be accepted by the City until Certificate of Occupancy of the last home. City Staff are tracking building permit issuance to ensure compliance.

- 15. Each lot shall provide a minimum of two parking spaces. Where possible, driveways should be deeper than 18 feet to allow for guest parking. Six guest parking spaces shall be provided on top of the east stormwater detention facility in Tract D.**

Finding: This condition has been partially satisfied. Six parking spaces have been constructed on top of the east stormwater vault. City Staff will review parking quantities and driveway dimensions with each individual building permit to ensure compliance.

- 16. Replace 4' chainlink fence around the recreation area with 4' black aluminum or steel picket fencing.**

Finding: A 4-foot black aluminum fence has been approved for the recreational area per the site work permit (SW18-0009). City Staff will ensure the fence has been installed upon final inspection of the site.

- 17. Roads C & D will be 20-foot-wide concrete shared vehicle/pedestrian surface.**

Finding: Road C has not been designed to be a shared vehicle/pedestrian surface. Instead, Road C has been redesigned to consist of two 10.5-foot wide travel lanes with a five-foot wide landscape strip and a five-foot wide sidewalk flanking each side of the road. With the addition of the sidewalks, the road will no longer be used as a shared vehicle/pedestrian surface. The site work plans shows Road D as a 20-foot wide concrete shared vehicle/pedestrian surface. The site work permit

(SW18-00009) has been reviewed and approved by City Staff. Although different from the condition of approval, the new design for Road C is equivalent.

- 18. Approved tree protection measures must be in place prior to any construction or demolition activities and installed in conjunction with limits of clearing and grading delineation. Clearing and grading shall be outside the critical root zone of significant trees.**

Finding: Tree protection measures were installed in conjunction with limits of clearing and grading delineation prior to any construction or demolition activities to ensure to ensure grading occurred outside the critical root zone.

- 19. Intersection of plat with SE 43rd Way shall be constructed per approved TIA16-00005. Left turn out may be allowed conditioned on construction of center lane merge pocket per City Standards.**

Finding: This intersection has been constructed per the approved traffic impact analysis (TIA16-00005) and the site work permit (SW18-00009).

- 20. (deleted)**

Finding: Condition no longer applicable. Deleted from the Preliminary Plat Notice of Decision.

- 21. Position driveway on the northly side of Lots 9 and 28 to allow for adequate back-up maneuvering.**

Finding: Driveway locations have been adjusted to allow for adequate back-up maneuvering. See site work permit (SW18-00009) Sheets C3.01 and C3.02.

- 22. Position driveway on the southerly side of Lot 30 to allow for adequate back-up maneuvering.**

Finding: Driveway locations have been adjusted to allow for adequate back-up maneuvering. See site work permit (SW18-00009) Sheets C3.01 and C3.02.

- 23. Submit supporting geotechnical information with the construction permit submittal for the proposed trenchless sewer connection.**

Finding: The applicant submitted a letter from Golder Associates, dated March 1, 2019, stating the trenchless construction of the stream crossing is feasible along

with recommendations for design and construction. The trenchless sewer has been designed and constructed per the recommendations.

- 24. Prior to Final Plat approval, an impervious surface table shall be provided that demonstrates the proposal does not exceed the impervious surface limitations for the property. The table shall provide a maximum square footage of impervious surface allowed per lot.**

Finding: A table identifying impervious surface limitations for each lot has been submitted to the City for review and approval. The table demonstrates the proposed development will not exceed 143,375.5-square-feet, which is the maximum impervious surface allowed for the development. The impervious surface limits for each lot will be reviewed with each building permit to ensure compliance with the table.

- 25. There is a 50-foot E-W trail easement located at the northern edge of the parcel recorded to benefit King County. By November 30, 2017, an agreement will be entered into were the Applicant will either:**
- a) Remove all proposed lots from the encumbered property consistent with Exhibit 3 (revised), attached; or,**
 - b) Provide a relocation agreement letter from King County Parks The letter will acknowledge:**
 - 1. The County will agree to exchange the existing easement for a new easement, and**
 - 2. The Applicant will construct a mixed-use trail for the length of the property along SE 43rd Way.⁴ The trail will be a minimum 10 feet in width, but will be 12-15 feet where not limited by critical areas and will be separated from the curb, where possible with landscaping; and,**
 - 3. The County will either execute a separate agreement with the Applicant to relocate the easement or will be a signatory to this plat.**

If the parties fail to agree, King County shall submit a report to the Hearing Examiner; the Hearing Examiner may decide to re-open the hearing if necessary.

Finding: This condition has been partially satisfied. A three-party (King County, City of Issaquah, and Steve Burnstead Construction) Easement Agreement was

⁴ The proposed City condition referenced "43rd Place." The Hearing Examiner assumes that SE 43rd Way was meant. *Exhibit PP10.*

executed and recorded (Rec. No. 21090814000892) to address this condition. The existing easement (Rec. No. 20151231001105) has been amended for King County to reduce the size of the easement from 50-feet to 30-feet in exchange for the applicant constructing a mixed-use trail for the length of the property along SE 43rd Way as part of the plat's frontage improvements. The single-family lots have been relocated outside of the easement. The trail has been designed and constructed to King County trail standards and ranges in size from 10-feet to 15-feet wide when not limited by critical areas and is separated from the curb with a landscape strip when possible. Once inspected and accepted the City will own and maintain the trail.

26. The Applicant shall complete a cultural survey on the property prior to final plat approval.

Finding: The applicant provided the City a cultural survey prepared by Tetra Tech dated October 2017. No archaeological materials were identified during the survey.

27. This variance decision incorporates all of the Conditions from PP16-00005.

Finding: Although the above statement is not a plat condition, the variance was incorporated into the preliminary staff report and Notice of Decision. Its intent is understood.

Exhibit 15, Staff Report, pages 5 through 10.

Bond Requirements

9. Under IMC 18.13.280, the Hearing Examiner may not approve a final plat until all required improvements are constructed in a satisfactory manner and approved by the responsible City departments, or sufficient bond has been satisfactorily posted in lieu of completion. The City Public Works Director must notify the City Planning Department in writing of the improvements deferred, the amount and time limit of bond or other security, and any other pertinent information. *IMC 18.13.280.G.* Robert York, City Public Works Director, stated in a letter to the Planning Department from October 27, 2020, that the developer has deferred some plat improvements and that the necessary bond amounts have been determined. *Exhibit 8.*

Public Meeting and Staff Recommendation

10. At the public meeting, City Associate Planner Valerie Portman discussed the history of the project and stressed that, while some minor deviations to the preliminary plat have occurred, these fall within the allowable scope of modifications under IMC 18.13.200.C. In particular, she explained how the parties addressed Condition 25 of the preliminary plat, related to the public trail within the plat, and arrived at a solution acceptable to the

parties. This then resulted in some minor deviations to the plat plan. Ms. Porter explained how City staff reviewed the proposed final plat for compliance with the technical requirements in IMC 18.13.180 through IMC 18.13.340, which govern the final plat application, the general and specific requirements of the final plat, the dedications and certifications contained in the final plat or that accompany the final plat, and the proposal's compliance with the requirements of Chapter 58.17 RCW. Ms. Porter stated that City staff determined that all of these requirements would be satisfied and noted that City staff recommend approval of the final plat, with additional conditions, including those to ensure that all necessary signatures are obtained, and that a copy of the recorded final plat packages is delivered to the Development Services Department within 10 days of recording, as well as to the King County Department of Records and Elections.

Comments of Ms. Porter.

11. City Senior Consulting Engineer Doug Schlepp discussed the public comment that was received and explained that concerns about traffic and pedestrian safety were adequately addressed during preliminary plat approval. *Comments of Mr. Schlepp.*
12. Applicant Representative Leo Suver thanked City staff for its work reviewing the proposal and stated that the Applicant would comply with the recommended conditions of final plat approval. *Comments of Mr. Suver.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide final plat applications under Issaquah Municipal Code (IMC) 18.04.490.C.2 and 18.13.200. A final plat is reviewed at a public meeting and does not require review at an open record hearing. *IMC 18.04.470.B.*

Criteria for Review

The Hearing Examiner shall review the final plat and all documents including any public comments and approve the final plat if the final plat:

1. Except for minor modifications under IMC 18.13.160, Modification of an approved final plat, is consistent with the approved preliminary plat; and
2. Is consistent with the provisions of this title and Chapter 58.17 RCW.
IMC 18.13.200.B.

These criteria include the criteria for review of plats set forth in RCW 58.17.110, the state subdivision statute. The Hearing Examiner previously held an open record hearing on the preliminary plat, addressed consistency of the application with RCW 58.17.110 criteria, and approved the preliminary plat with 27 conditions. *Exhibit 4.* Because the application has already undergone review for consistency with the applicable subdivision criteria, and conditions of approval were applied to ensure consistency, final plat review is limited to determining whether

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conditions of preliminary plat approval and Chapter 18.13 IMC technical requirements are satisfied.

Conclusions Based on Findings

1. **With conditions, the final plat complies with Chapter 18.13 IMC technical requirements.** The City gave reasonable notice of the final plat application and associated public meeting. The City, through the preliminary plat process, previously reviewed the environmental impacts associated with the project site, as required by SEPA. The Applicant has generally complied with Chapter 18.13 IMC technical requirements, including dedications and certifications, improvements, and financial guarantees on deferred improvements. Conditions are necessary to ensure the Applicant records the approved Final Plat and provides a copy of the recorded final plat packages to the Development Services Department within 10 days of recording. *Findings 1 – 12.*
2. **With conditions, the final plat complies with the conditions of preliminary plat approval.** The residential development proposed for the property is consistent with the Comprehensive Plan's Multifamily Residential designation and with the "Multifamily – High" zoning designation. The application for final plat approval was adequately reviewed for compliance with the conditions of the preliminary plat approval. Completion of required improvements is guaranteed through posting of a performance bond by the Applicant. Appropriate provision has been made for the public health, safety, general welfare, and all other items specified in IMC 18.13.310. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all local, state, and federal code requirements, and properly records the final plat. *Findings 1 – 12.*

DECISION

Based on the preceding findings and conclusions, the final plat for the Mallard Pointe proposal is **APPROVED**, with the following conditions:

1. Minor, non-substantive adjustments may be made to the final plat at the discretion of the Director of the CPDD, prior to recording of the final plat mylars.
2. Prior to the Applicant recording of the final plat with King County, the necessary signatures of City representatives must be signed on the mylar sheets.
3. The Applicant shall record the approved final plat with the King County Department of Records and Elections.

4. A copy of the recorded final plat packages shall be provided to the CPDD within ten (10) days of recording with the King County Department of Records and Elections. The applicant shall also submit an electronic copy of the plats in a format acceptable to the Public Works Department.

Decided this 29th day of January 2021.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center